2003-246; citations omitted.]

In their Motion for Reconsideration, petitioners do little other than rehash their previously-rejected arguments. In addition, petitioners' argument regarding the burden of proof is irrelevant given the fact that "We decided the issue in this case without regard to the burden of proof." (Slip op. at 6.)

Upon due consideration, it is

ORDERED that petitioners' Motion for Reconsideration, filed on October 14, 2003, is denied.

(Signed) Robert N. Armen, Jr.

Robert N. Armen, Jr.
Special Trial Judge

Dated: Washington, D.C.
October 28, 2003

A-3

UNITED STATES TAX COURT
WASHINGTON, DC 20217

MICHAEL H. VISIN AND
NATALIE MARSELLY
Petitioners

v.

COMMISSIONER OF
INTERNAL REVENUE

Respondent

Docket No. 10149-02

ORDER AND DECISION

After due consideration of respondent's Motion For Entry Of decision, filed October 30, 2003, and petitioners' Response, filed December 1, 2003, it appearing to the court that petitioners do not dispute respondent's computation for entry of decision, and in order to give effect to the Court's disposition of issues in T.C. Memo. 2003-246, it is hereby

ORDERED that respondent's Motion For Entry of Decision, Filed October 30, 2003, is granted. It is further

ORDERED AND DECIDED that there are deficiencies in income taxes due from petitioners for the taxable years 1997 and 1998 in the amounts of $1,393 and $1,365, respectively.

(SIGNED) Robert N, Armen.Jr.

Robert N. Armen, Jr.
Special Trial Judge

Entered: DEC 8 2003

A-4

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MICHAEL H. VISIN NATALIE MARSELLY Petitioners-Appellants, v. COMMISIONER OF INTERNAL REVENUE Respondent-Appellee.	No. 04-71219 Tax Ct. No. 10149-02 MEMORANDUM*

Appeal from a Decision of the
United States Tax Court

Submitted February 7, 2005**

Before: FERNANDEZ, GRABER, and GOULD, Circuit Judges

---

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2)

Michael H. Visin, a self-employed artist, and his wife, Natalie Marselly, appeal pro se the Tax Court's post-trial decision disallowing the deduction of certain business expenses for the 1997 and 1998 tax years. We have jurisdiction under 26 U.S.C. § 7482. We review de novo the Tax Court's conclusion of law, *Biehl v. C.I.R.*, 351 F.3d 982, 985 (9th Cir. 2003) and we affirm.

The Tax Court correctly held that taxpayers' home office deductions for rent and other expenses are properly limited by the Commissioner, in accordance with Internal revenue Code (I.R.C.) § 280A(c)(5), 26 U.S.C. § 280A(c)(5), to the income derived from Michael Visin's business. *See Horton v. Commissioner,* 74 T.C.M. (CCH) 1480, 1481 (1997).

The Tax Court also correctly held that because taxpayers failed to make a proper election on their 1998 income tax return, they were not entitled to "expense" under I.R.C. § 179 the cost of the computer equipment and software purchased this year. *See Starr v. Commissioner,* 69 T.C.M. (CCH) 2501, 2504 (1995), *aff'd by unpublished opinion,* 99 F.3d 1146 (9th Cir. 1996).

Taxpayers remaining contentions lack merit.

AFFIRMED.

A - 5

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MICHAEL H. VISIN NATALIE MARSELLY Petitioners-Appellants, v. COMMISIONER OF INTERNAL REVENUE Respondent-Appellee.	No. 04-71219 Tax Ct. No. 10149-02 ORDER

Before: FERNANDEZ, GRABER, AND GOULD,
Circuit Judges

Appellant's motion to recuse Judges Fernandez, Graber, and Gould is denied.

Appellant's motion for permission to attach 3 excerpts of record to the petition for rehearing en banc is denied,

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35

The petition for rehearing en banc is denied.

Appellant's motion for clarification of notice from the court on extension of time to present the petition for rehearing is denied as moot.

No further filings will be accepted in this closed appeal.

Docket No. 05-799

In The

Supreme Court of the United States

Michael H. Visin
Natalie Marselly *Petitioners*

v.

Commissioner of Internal Revenue Service
Respondent

PETITION FOR REHEARING

Michael Visin
Petitioner Pro Se
284 26th Avenue
San Francisco, Ca. 94121
Tel: (415) 387-3809

Abbreviations: /Following will be used in the text of Petition/:

1. Bus. Exp. - will always stand for - **Business Expenses.**
2. BRPs. - will always stand for - **Business Rental Payments.**
3. Pr. - will always stand for - **Petitioner.**
4. R. - will always stand for - **Respondent.**
5. Hmr. - will always stand for - **Homeowner.**
6. Pr.'s - will always stand for - **Petitioner's.**
7. R.'s - will always stand for - **Respondent's.**
8. Hmr.'s - will always stand for - **Homeowner's**
9. Hmrs. - will always stand for - **Homeowners.**
10. Tr. Reg. - will always stand for - **Treasury Regulations.**
11. I.R.C. - will always stand for - **Internal revenue Code.**
12. T.C. - will always stand for - **Tax Court**
13. ONBEs.-will always stand for **Ordinary and Necessary Business Expenses.**

Table of Content:

List of the Legal Authorities:

1. Internal Revenue Code Section 280A
2. Treasury Regulations 1.280A-1, 2
3. Internal Revenue Code Section 162.
4. Treasury Regulation 1.162-1
5. Legislative Committee of the House
   Opinion on Sec.280A Amendment:
   [House Report 99-426, pages 133 – 135
   (1985), 1986 – 3 C.B. (Vol. 2) pages 133 – 135.]
6. IRC. Sec.179

7. Constitution of the United States
   Section 1, of Article I.
8. Constitution of the United States
   Section 8, of Article I.
9. Constitution of the United States
   Sections 1 and 2, of Article III.
10. Constitution of the United States
    Article VI, second paragraph.
11. Constitution of the United States
    Amendment V.
12. Constitution of the United States.
    Amendment XIV.

/This Petition was prepared in compliance with Supreme Court of the United States Rules 29, 33, 34 and 44,./

Special Note:

All underscored words and expressions, and bold type, - is by Petitioner only, by necessity to emphasize, or to make stand out certain contentions, and parts of the quotations from the Tax Laws, and from Treasury Regulations and similar, which never have been paid particular attention to, - in previous similar cases

CERTIFICATION

This Petition is Presented in good faith and not for the delay, and is particularly restricted to intervening circumstances of a substantial and controlling effect, and to other substantial grounds not previously presented. These are specifically restricted to six Constitutional Guaranties and Protections extended to individual Citizen, and to this Petitioner, some of which, but not substantial all, were only mentioned in original Petition but not deliberated on, due to limit on pages.

Petitioner also lists all reasons why inherent deficiencies in the actual reduction of the Text of Sec.280A may lead to this Section to be misunderstood and misinterpreted in the practice of its application. Only some were mentioned in Original Petition.

Petitioner also offers in this Petition his thoughts, why Courts inclination toward conformity of decision in similar cases, should not possibly prevent Courts' judicial inquiry in the Laws intimately related to the Case, which have not been considered in their whole in precedent cases, simply because they were not brought to attention of the Courts in full detail.

Petitioner also greatly hopes that this Petition will help Pr. to enter in Legal Dialog with Respondent, which Petitioner was denied for seven and a half years, and that finally fair and independent Judicial Review in his case will happen, if Respondent will respond in good faith to the most important Legal Contentions of Petitioner.

Only rarely in this Petition, Petitioner makes references to his Original Petition to keep the logical chain between two unbroken.

Hereby certified by Petitioners:

Petitioner Pro Se
Michael Visin_____ /Date/_____

Natalie Marselly _____/Date/_____

Introduction

In this Petition Pr. will fully rely on the legal contentions and precise Facts and Evidence presented to Court from such Tax Laws and Legislative Regulations, as Sections **162, 1.162-1, 1.280A-1,2,** and **1985 Legislative Amendment of Sec.280A,** exactly as they are written; Pr. will try in this Ptn. to draw Court's attention to whether these National Laws received due attention and respect in Lower Federal Courts, and whether these Courts acted on these National Laws as Constitution of The United State directs them, and whether these Courts handling of Pr.'s case constituted Due Process under the Law; rendering to Pr. Equal Constitutional Protection under these Laws. To complement original Ptn., Pr. presents additional legal Contentions in regard to fundamental differences between Sec.162 and Sec.280A, which could not be included in original Ptn. due to limitation on the number of pages. And while these are complementary to, (no less than fifty points of proof in support of Pr.'s position), already presented, - they, probably, are the most important, especially in regard to analyzes of how and by what reasons Sec.280A became so misunderstood during the practice of its application.

Part A. Constitutional Guarantees and Protections extended to Citizen-Petitioner, and Specific Constitutional Directives to The Judiciary relative to This Case.

Section 1, of Article I: "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." This quote, in Pr.'s opinion, sets the rule that only the Congress is allowed to enact the National Laws, which has to be respected, acted upon, and subjected to, by anyone in This Country, including, especially the Judicial Brunch; and thus no one is above the Active Law. (And while it is known that, Supreme Court of The United States sometimes, reflecting changes in Life of the Nation and its Collective Conscious, may alter Congressional Laws; this always comes, as result of some particular case in the Court, and is always being accompanied by comprehensive judicial review, reflected in Court Opinion. (This Pr., however, never pretended or asked Lower Courts or This Court, to change or alter any Laws. The only thing Pr. ever asked for, is to apply national Laws in his Case - exactly how these Laws are written.)

Section 8, of Article I: "The Congress shall have Power To lay and collect Taxes, ... To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

This quote, in Pr.'s opinion, establishes that Tax Laws enacted by the Congress, enjoy the same status as any other National Laws, and must always be respected and acted upon by all Brunches of the Government, by Its Departments, and by any Officer in them.

Sections 1 and 2 of Article III: "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.."

"The judicial Power shall extend to all Cases, in Law and Equity, arising under the Constitution, the Laws of the United States, ..."

These quotes, in Petitioner's opinion, definitely establish Constitutional Responsibility of Judicial Brunch, to hold all National Laws in equal respect, and equitably act-upon them in all cases.

Article VI, second paragraph: "This Constitution, and the Laws of the United States which shall be maid in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Laws of the Land; and the Judges in every State shall be bound thereby, any Thing in Constitution or Laws of any State to the Contrary notwithstanding."

This quote in Pr.'s opinion, while devoting its prevailing attention for establishment of the overruling authority of National Constitutional Laws, over the State's Laws; at the same time, proclaims the National Constitutional Laws the "supreme Laws of the Land", by which all judges in This Country shall be bound by; the rule, equally applicable to Pr.'s Case, with special importance of establishment that, "...the Laws of the United States...shall be made in Pursuance thereof...", but not to be ignored or flatly rejected, as it happened in Pr.'s Case, in both Lower Courts.

Amendment V: "No person shall be.....deprived of life, liberty, or property, without due process of the law;..."

This famous quote, in Pr.'s opinion, not only establishes that these possible listed deprivations are too serious, and can not be acted upon by the Government without "due process of the law";

and that Laws enacted by the Congress, should be respected by the Judiciary, in accordance with their supreme Laws of the Land status, established in the Constitution, and can not be ignored in the Due Process, without undermining it.

Amendment XIV: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

While this, equally famous quote, speaks of the States, it is impossible, in Pr's opinion, to imagine that United States Government, by itself, and especially its Executive and Judicial Brunches, are left immune to These Rules; and should not, in practice, act as the shining example of These Rules application in the Life of This Country. In addition this quote, in Pr.'s opinion, establishes several important rules of relationship between United States citizens, and such brunches of the Government as Executive and Judicial, which, means following:

a). Any Law enacted by the Congress extends equal protection to all United States citizens, which means that, no Law can be disregarded or ignored by the Executive or Judiciary brunch of the Government, if citizen, in his or her appeal to the Government, as a whole, places himself, due to legally sound reasons, under this Law protection.

b). No Law shall be applied by the Judiciary in individual case, without Due Process under the Law, which demands comprehensive Judicial Process, for the purpose of examination of this Law applicability to the particular case and verification that this Law does not abridge "the privileges or immunities" unquestionably granted to any Citizen-Pr. by the other National Law.

Part B. Additional Fundamental Legal Contentions in support of Pr.'s Position.

1. The main Law, under which protection Pr. placed himself and this Case, is Sec.162, - "Trade and Business Expenses", which is undeniably one of the most important Supreme National Laws of the Land, because it regulates Business Taxation and, in fact, is the very mechanism of our dynamic economy. The leading principle of this Law is based on the Rule that Ordinary and Necessary Business Expenses are taxed not on the particular Business's Side,

but on the Side of the Other Parties, which are on Receiving End of these Business Expenses; and this is why these expenses are fully deductible in the end of the Business's year to any Business, even if Business came up with Net Business Loss. Sec.162 and Sec.1.162-1 are very comprehensive Laws, which have their Main Rules, just described, and Cross-References with some other Sections in I.R.C., reflecting some exceptions from the General Rule, but no such exists with Sec.280A, of which Court was equitably informed.

2. Since Sec.162 is based on business taxation principle described over, equally applicable to any legitimate business, and it includes in its Regulations all possible exceptions from the General Rule, no other section was needed to rule over its specificity.

3. Sec.280A originated only, when Congress allowed Hmrs, who use part of their Homes exclusively for business, to deduct proportional to the used for business part, typical Homeowners Payments in the Security and Maintenance of the Equity of their Homes, such as Home Insurance, Home Depreciation, Pest Control, Home Repairs and similar. This, was the only purpose of Sec.280A enactment; which had nothing to do with deduction of the ONBEs., under Sec.162, which remain unchanged; this is why no Cross-Reference between Sections162 and 280A was included in these Sections, which would adversely affect or put some limitation on deductions regulated by Sec.162.

4. By allowing to Homeowners such deductions, which Congress named Home Office Deductions, Congress placed certain limitations on them, because these expenses do not participate in the Income Creating Activity, and can not be deducted under the same rule as Ordinary and Necessary Business Expenses. (The very need why special Tax Code Section was needed regulating Home Office Deductions.)

5. By allowing, freshly named, Home Office Deductions, Congress established quite a rigid limitations on them, by not only allowing them to be deducted only from the Excess of the Gross Income from the Business conducted on the part of the Home, but also demanding that proportional to Business Space part of Mortgage Interest, Real Estate Taxes, and Casualty Losses, which are allowed to all Homeowners to be deducted unconditionally, to be deducted first from the Excess of the Gross Income from the Business, in advance of Home Office Deductions. And if there is

not enough of the Excess of the Gross Income remained for the full amount of Home Office *Deductions to be deducted, the remaining* part of them was allowed to be carried on to the next year of the Business under same condition of deductibility.

6. Points **3., 4. and 5.** most precisely describe the purpose of Sec.280A original enactment and the principle and order by which Home Office Deductions were allowed by the Congress. In the year 1985, Sec.280A was amended by the Congress; (see on this in Original Petition) and one of the main reason for this Amendment, was that, in **Scott v. Commissioner of IRS, 1985**, Tax Court allowed deduction of Home Office Deductions in full, which increased Mr. Scott's, (Hmr.) Business Net Loss. In this Amendment Congress most sharply ruled that, ONBEs. must be deducted First from the Gross Income of the Business with allowable Business Net Loss, well in advance of attempt of Home Office Deductions to be processed under restriction that these deductions can not create or increase the possible Net Business Loss. The summary of this is that, because ONBEs. are allowed to be deducted to business in full under Sec.162, it means that **Home Office Deductions regulated by Sec.280A, can start only after Deductions regulated by sec.162 ends!** This undeniable and none ignorable Legal Fact of Legislative Amendment, provides **Full Proof Evidence** in support Pr.'s Position that, ONBEs., and Pr.'s BRPs, as undeniably legitimate part of the first, as Sec.162 specifically rules, - do not, by any means, belong under Sec.280A authority. This also proofs that, attempt of the Tax Court to prove that Sec.280A has legal authority over Sec.162 could not be successful; because it is clear from Legislative Amendment of Sec.280A that it is Sec.162 that has undeniable authority within the established by the Congress Order or Processing the Home Office Deduction, **with a must of ONBEs. to be deducted First and in Full!** This undeniably proves that in Pr.'s Case Sec.280A was given authority, which it has not been given by the Congress; and which, according to Supreme Laws of the Land - Sections 162 and 1.162-1, - simply does not exist in I.R.C.

7. It is worth to add few additional points of explanation of how and why the Misconception in the proper understanding of legal Authority of Sec.280Acould happen.

a). While deduction of specifically Bus. Exp., regulated by Sections 162 and 1.162-1, for the purpose to determine the Excess

of the Gross Income from the Business, available for the Home *Office deductions, - is the First Step in the processing Home Office* Deductions, - **this First Step was not included in the Paragraph (c)(5) "Limit on Deduction" of Sec.280A.** This none inclusion of such Important Starting Step of the whole process of specific deductions, for which only, Sec.280A was enacted, creates an immediate brake in the Logical Chain of resulting regulation of Legislative Amendment of Sec.280A; making it, so to say, headless, which also creates the **Starting Point for the Misconception.**

b). This is greatly exacerbated by the splitting the expression of "Excess of the Gross Income from the Business" in two parts, creating the wrong impression that, This Excess in Sec.280A is determined by deductions of Home Mortgage Interest and Similar from the Gross Income; and that this, indeed, is the First Step in the process of Home Office Deductions.

c). And it is because, again, the Deduction of Specifically Bus. Exp., the must - First Step, according to Legislative Amendment, has not being mentioned at all in (c)(5) of 280A, additional wrong impression can be created that, subparagraph (ii) of (c)(5) can be spread on deductions of Ordinary and Necessary Business Expenses also, and that Net Business Loss under Sec.280A is not necessarily deductible, **which, literally, can turn the whole meaning of Legislative Amendment of Sec.280A, and this very Section - upside down!** And this exact misconceptional approach clearly surfaces in Tax Court Opinion, with Tax Court quoting ruling paragraphs of Legislative Amendment of Sec.280A, which stand in exact opposition to the T.C. Opinion.

d). It is possible to presume that, the very creators of the text of Sec.280A, have not included the First Step, the deduction of Specifically Bus. Exp. in (c)(5) of Sec.280A, because this Section, as they possibly thought – is not about deductions of ONBEs. at all; **but this none inclusion happened to be great disservice to the very Cause of Legislative Amendment of Sec.280A.**

Still, if Lower Courts have not paid attention to the possibility that, Sec.280A can be misinterpreted on account of over described deficiencies in formulation of (c)(5), these Courts should have not been turning away, when Pr. pointed to these. First, because these deficiencies are real and are able to distort the exact meaning of 280A's Amendment; and second, because this is what the Due

Process Under the Law is all about – **the Legal Dialog, which brings all relative legal data to the surface.** And in this case, it must have been: Sections 162, 1.162-1, 1.280A-1,2 and Legislative Amendment of Sec.280 itself. But both Lower Courts in this case have chosen to avoid the Due Process, and have not entered in Legal Dialog even with themselves.

e). Also, Subsection **(a)** of Sec.280A renders to attentive reader definite proof that Sec.280A has no authority over Pr.,' BRPs; for convenience we quote it again:

"except as otherwise provided in this section, in case of a taxpayer who is an individual or an S corporation, no deductions **otherwise allowable under this chapter** shall be allowed with respect of the use of the dwelling unit which is used by the taxpayer during the taxable year as a residence".

Question No. 1: Do Pr.'s BRPs. belong to **"deduction otherwise allowable under this chapter?" Certainly not,** because they are not specified neither in Sec.280A, nor in Sec.1.280A-1,2 and not even mentioned there in any shape or form. But they are specified as deductible BRPs in Sec.162, and there are no Cross-References in 280A and 162 to otherwise, or anywhere in I.R.C., authorizing the breach between fundamental differences in taxation approach between Home Office Deductions and ONBEs.,

Question No.2: And what about others ONBEs, are they also belong to deductions allowable under the 280A? **The answer is No**, because they, again, are specified as deductible expenses in the same Sec.162. and have nothing to do with ruling of Sec.280A, except **all of them must be deducted first** from the Gross Income of Business, as Congress Explicitly rules in 1985 Legislative Amendment of Sec.280A. And in respect of the **usage** of the part of the dwelling unit for business and the other part for living, - **it is the fact of such usage, why strictly Personal Expenses, let call them what they are**: as Payments in Security and Maintenance of the Equity of the Owned Home were allowed to be deducted at all!

Part C. The Due Process under the Law, and whether it was rendered to Pr. and His Case by the Both Lower Courts.

1. In Tax Court: All the Tax Laws and Regulations on which Pr. based his Legal Arguments, exactly how these Laws and Regulations were enacted by the Congress and by Secretary of The Treasury with explicit authorization of the Congress, which made these Regulations The Legal Extensions of the National Laws, -

were exactly The Laws, which Tax Court was endeavored by Constitution and Congress to uphold. So, how Tax Court treated these Laws? It treated them in complete disregard, by rejecting all Pr.'s Legal Contentions based on them, and prevented any possibility for Pr. to enter in Legal Dialog with R. and Court itself, by disallowing the Open Court Hearing that Pr. so desperately tried to obtain. Farther, Court also rejected and refused to conduct the Judicial review of completely New Pr.'s Legal Arguments advanced by Pr. in direct Pr.'s Response to Court's Opinion. T.C. allowed to Pr. only the role of passive observer of what Court will say or do; **but the role of Pr., as Pro Se Advocate in Pr.'s Case, - was totally denied to Pr. by the Tax Court.**

Can be such Judicial Process characterized, as the Due Process Under The Law, as Constitution defines it, especially, in VI, and XIV Amendment? Did Tax Court demonstrate Due Respect to the Supreme Laws of the Land, such as Sections162 and 1.162-1, and act with concern in regard to Equal Constitutional Protection that these Laws extend to Pr. under them? **Tax Court disregarded Sec.162, completely ignored Sec.1.162-1 and Sec.1.280A-1,2; and misrepresented Last, 1985 Legislative Amendment of sec.280A**. In fact, T.C. did, just about, anything that could be done wrong in this Case, and it did it with authority, clearly demonstrated in T.C.'s Order of denial of Pr.'s Motion For Reconsideration.

In this list of fundamental errors, we have not listed Misrepresentation by the Tax Court of the Legal Authority of Sec.280A, but on this account it relied on the precedents, which were ruled always for R., under the same misconceptional interpretation of legal authority of Sec.280A; and we don't think that such precedents can be judged helpful to the Tax Court under Stare Decisis Principle; because if these precedents were disallowing deduction of the Business Net Loss, happened on account of properly substantiated ONBEs., the decisions in such precedents were fundamentally unconstitutional, because they definitely ignored major Ruling and Principle on which Sec.162, the Supreme Law of the Land is based in regard to Business Taxation. And as we already pointed in Conclusion of Original Ptn., if Tax Court would not completely ignored Sec.1.162-1, which text and Cross-References immediately take all the air from the T.C. attempt to prove that Sec.280A, which has no Legal Basis